

Atty. Dkt. No. 032026-0460

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**REMARKS**

Applicants acknowledge the receipt of a Notice of Non-Compliant Amendment under 37 C.F.R. § 1.121 dated July 27, 2006. In the notice it was explained that "new claim 22 is not part of the elected invention and should be referenced as "(New/Withdrawn)", or another identifier that indicates as such. Claim 22 is drawn to SEQ ID NO:14-15, neither of which are elected subject matter." Applicants respectfully submit that the status identifier for claim 22 is correct and request that the Notice of Non-Compliant Amendment be withdrawn.

Under 37 C.F.R. § 1.121 Applicants may not use any status identifier for the new claim other than "(New)." According to 37 C.F.R. § 1.121(c) "the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: (Original), (Currently amended), (Cancelled), (Withdrawn), (Previously presented), (New), and (Not entered)." The rule further states at § 1.121(c)(2) that "only claims having the status of "currently amended," or "withdrawn" if also being amended, shall include markings. If a withdrawn claim is currently amended, it's status in the claim listing may be identified as "withdrawn-currently amended." Finally § 1.121(c)(3) states that "any claim added by amendment must be indicated with the status of "new" and presented in clean version, i.e., without any underlining." Based on these Rules, "New/Withdrawn" may not properly be used in an amendment as a status identifier and such use would itself require the Patent and Trademark Office to issue a Notice of Non-Compliant Amendment. As such, Applicants respectfully request that the Examiner withdraw the present Notice of Non-Compliant Amendment and reconsider whether Claim 22 in fact deserves the status of withdrawn.

Applicants respectfully submit that even if Claim 2 is directed to non-elected subject matter, the Examiner may properly rejoin and allow Claim 22 if she finds that linking claim 7, from which Claim 22 depends, is allowed. In this situation Claim 22 would not have the status of withdrawn. Thus, in submitting the claim, Applicants must designate Claim 22 as new, but it is up to the Examiner to determine the proper status of Claim 22 during examination. If the Examiner disagrees with this analysis, Applicants respectfully request that the Examiner point to

Atty. Dkt. No. 032026-0460

the exact language in 37 C.F.R. § 1.121 that allows for the status identifier "New/Withdrawn" so that Applicants may comply with the Rules.

Respectfully submitted,

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